HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.26390 OF 2006

Between:

Shri A.V. Prasanna Kumar

…Petitioner

AND

Municipal Corporation of Hyderabad,
Hyderabad, rep., by the Commissioner

...Respondent

: O R D E R :

Counsel for the petitioner : Shri B.V. Subbaiah

Counsel for the respondent : Smt. G. Jyothi Kiran

27th December, 2006

Per G.S.SINGHVI, C.J.

This petition is directed against notice dated 18-12-2006 issued by Commissioner, Municipal Corporation of Hyderabad under Section 636 of the Hyderabad Municipal Corporation Act, 1955 (for short, 'the 1955 Act'), whereby the petitioner was directed to demolish the deviations made while raising construction of the basis of sanctioned building plan and unauthorised construction of third floor.

At the hearing, Smt. G. Jyothi Kiran, learned counsel for the respondent brought to our notice that before issuing the notice impugned in the writ petition, the respondent had issued notices dated 24-11-2006 and 07-12-2006. She also pointed out that in response to notice dated 24-11-2006, the petitioner had made representation. According to Smt. Jyothi Kiran, the petitioner refused to accept notice dated 07-12-2006 and, therefore, final notice was issued under Section 636 of the 1955 Act. All this has not been controverted by Shri B.V. Subbaiah, learned counsel for the petitioner. He, however, submitted that notice dated
07-12-2006 was not served on the petitioner.

In our opinion, it is not necessary to decide whether or not notice dated 07-12-2006 issued under Section 452 of the 1955 Act was served upon the petitioner because we feel that ends of justice will be met by giving liberty to the petitioner to make representation against the action proposed to be taken by the authorities of the Municipal Corporation with a direction to the latter to decide the same by assigning reasons.

In the premise aforesaid, the writ petition is disposed of with the following directions:

1) Smt. Jyothi Kiran, learned counsel for the respondent should handover xerox copy of notice dated 07-12-2006 to Shri B.V. Subbaiah, learned counsel for the petitioner today itself.

2) Within next seven days, the petitioner may make representation against the proposed demolition of the constructions made by him in violation of the sanctioned plan and/or misuse of the premises.

3) The Commissioner, Municipal Corporation of Hyderabad shall, after considering the representation of the petitioner pass appropriate order within seven days and communicate the same to the petitioner.

4) Till the passing of appropriate order and seven days thereafter, the construction of the petitioner shall not be demolished.

5) If the petitioner challenges the order which may be passed by Commissioner, Municipal Corporation of Hyderabad hereafter by filing civil suit, then the concerned Court shall not pass ex parte injunction order and must give notice and reasonable opportunity of hearing to the Municipal Corporation before deciding the application for temporary injunction.

A copy of this order be sent to Chief Judge, City Civil Court, Hyderabad who should bring the same to the notice of the courts which are dealing with the suits for declaration and injunction filed against Municipal Corporation of Hyderabad.

As a sequel to disposal of the writ petition, WPMP No. 33916 of 2006 filed by the petitioner for interim relief is disposed of as infructuous.

G.S. SINGHVI, C.J.

December 27, 2006

C.V. NAGARJUNA REDDY, J.

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